

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED  
Release to Manager, NO Determinations - Cincin

DATE: [REDACTED]

SURNAME: [REDACTED]

Date: JAN 10 2001

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

[REDACTED]  
Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

[REDACTED] was incorporated on [REDACTED].  
The Articles of Incorporation states the purposes for which the Corporation is formed are:

Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

[REDACTED] By-Laws state that its purposes are:

- A. to promote public education on the subject of capital punishment and related subjects;
- B. to maintain an organization composed of groups in [REDACTED] opposed to capital punishment;
- C. to provide a mechanism to disseminate information and to provide educational opportunity in the community at-large concerning the effect of the imposition of the death penalty;
- D. to assist and to support those who are about to be executed pursuant to law, and their immediate families and loved ones; and
- E. to increase awareness for legislation affecting capital punishment in Indiana.

[REDACTED] represents that its ultimate goal is the abolition of capital punishment. [REDACTED] publishes a quarterly newsletter and maintains a webpage. The organization represents that most of its funds will come from contributions from individual and group members. [REDACTED] also holds four fundraising events per year. Membership requires either volunteering time or a financial contribution. The members are asked to contribute [REDACTED] a year, but exceptions are made for circumstances, such as student status or prisoners. There are approximately [REDACTED] members.

[REDACTED] represents that approximately 10% of its time and funds are spent for lobbying to abolish capital punishment. This time will primarily be spent informing the public and legislators on proposed and existing legislation affecting capital punishment. [REDACTED] also states that 60% of its time will be spent on educating the Indiana public about the death penalty practice and policy in the state by creating and disseminating brochures as well as newsletters. The newsletters are published quarterly. Another component that makes up the represented 60% figure, is the time members attend meetings of various

[REDACTED]

related organizations to "get the word out." Such organizations include [REDACTED], [REDACTED], and the [REDACTED]. The organization states that the benefits of membership are receipt of a quarterly newsletter and the opportunity to work with like-minded individuals toward the common goal of the organization.

[REDACTED] has not made an election under section 501(h) of the Code.

Section 501(c)(3) of the Code provides, in part, an exemption from federal income tax for organizations organized and operated exclusively for charitable purposes and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

Section 1.501(c)(3)-1(c)(3)(ii) of the Income Tax Regulations ("regulations") provides that an organization is an 'action' organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(b) Advocates the adoption or rejection of legislation.

The term 'legislation', as used in this subdivision includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation. An organization for which the expenditure test election of section 501(h) is in effect for a taxable year will not be considered an 'action' organization by reason of this paragraph (c)(3)(ii) for that year if it is not denied exemption from taxation under section 501(a) by reason of section 501(h).

Section 1.501(c)(3)-1(c)(3)(ii) of the regulations provides that an organization is an 'action' organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) It advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

In Seasongood v. Commissioner, 227 F.2d 907 (6<sup>th</sup> Cir., 1955), the Circuit Court held attempts to influence legislation that constituted five percent of total activities were not substantial. The Court noted that a determination of whether attempts to influence legislation constitute a "substantial" portion of an organization's total activities is a factual one and there is no simple rule as to what amount of activities is substantial.

In Haswell v. United States, 500 F.2d 1133 (Cl. Ct. 1974), cert. denied, 419 U.S. 1107 (1975), the Court of Claims cited percentage figures in support of its determination that an organization's lobbying activities were substantial. The amount of the organization's expenditures for lobbying activities ranged from 16.6% to 20.5% of total expenditures during the four years at issue. While the Court stated that a percentage test is only one measure of substantiality, and not by itself determinative, it held that these

percentages were a strong indication that the organization's purposes were no longer consistent with charity.

In Kuper v. Commissioner, 332 F.2d 562 (3rd Cir. 1964), cert. denied, 379 U.S. 920 (1964), the Court of Appeals sustained the Tax Court's decision holding that a substantial part of the activities of the Millburn League consisted of attempting to influence legislation, a fact which would disqualify the donation as a charitable contribution. The Court held that attempts to influence legislation may begin before an organization first addresses itself to the public or to the legislature. Accordingly, it considered time spent discussing public issues, formulating and agreeing on positions, and studying them preparatory to adopting a position, and compared that time with the other activities in determining the substantiality of the attempts to influence legislation.

In League of Women Voters v. United States, 180 F. Supp. 379 (Ct. Cl. 1960), cert. denied, 364 U.S. 822 (1960), the Court of Claims held that where activities of the League consists of writing, telegraphing or telephoning to representatives in Congress and the state legislature, testifying before legislative committees and like direct efforts to influence legislation, a very substantial portion was spent in formulating, discussing and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures. This type of activity is properly considered a part of a program for influencing legislation. The activities in question are an essential part of the general legislative program of the League to promote desirable governmental policies through legislation, direct political action being the end product.

Rev. Rul. 62-71, 1962-1 C.B. 85, provides that an organization which, as its primary objective, advocates the adoption of a doctrine or theory which can become effective only by the enactment of legislation is not entitled to exemption from Federal income tax under section 501(a) of the Code, since it is an "action" organization and thus is not operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code. The organization at issue in this revenue ruling is a nonprofit corporation formed for the purpose of supporting an educational program for the stimulation of interest in the study of the science of economics or political economy, particularly with reference to a specified doctrine or theory. Most of the publications disseminated by the organization, together with a substantial part of its activities, deal with the theory advocated. The theory advocated can be put into effect only by legislative action.

██████ fails to qualify as a section 501(c)(3) of the Code organization for two reasons as set forth more fully below. First, ██████ engages in a substantial amount of lobbying as defined in section 1.501(c)(3)-1(c)(3)(ii) of the regulations, and secondly, ██████ ultimate goal is achievable only through legislation. Section 1.501(c)(3)-1(c)(3)(iv) of the regulations.

#### **Substantial Amount of Lobbying**

The guidance of the Seasongood and Haswell courts regarding what is considered "substantial" is useful here. Under Seasongood, a five percent safe harbor has been frequently applied as a general rule of thumb regarding what is substantial. Similarly, lobbying activities that exceed the roughly 16 to 20% range of total activities found in Haswell are generally considered substantial.

The Kuper and League of Women Voters courts held that time spent in formulating, discussing, and agreeing upon an organization's positions with respect to advocating or opposing legislative measures is properly considered a part of the organization's program for influencing legislation. Thus, time spent on formulating advocacy positions is considered as devoted to influencing legislation.

[REDACTED]

Here, [REDACTED] states in Part II of its application Form 1023 that lobbying consists of 10% of the organization's time and funds, and education consists of 60%. However, clearly a portion, if not all, of the 60% educational figure is considered, pursuant to the Kuper and League of Women Voters cases, in determining how much time an organization spends on influencing legislation. The imperative question being is the time spent by [REDACTED] to influence legislation substantial? Clearly, as discussed below, the answer is yes.

For instance, [REDACTED] newsletter, Volume 1, Issue 1, [REDACTED] formulates and discusses the positions taken toward advocating the enactment of legislation to abolish capital punishment. Indeed, the first paragraph of the lead article written by [REDACTED]'s Executive Director, entitled *Becoming Better Messengers*, as noted below, expresses the [REDACTED]'s goal of abolishing capital punishment and to obtain a larger membership to help achieve that goal.

ICACP's mission is to abolish capital punishment. Some of us are abolitionists because capital punishment is applied arbitrarily; others because we believe that the taking of human life is wrong; yet others because capital punishment condones the activity we condemn. We must reach those who share a view consistent with that mission. We have done well to identify those people who are passionate on this issue, and we need to continue to energize and nurture that base, but we also need to dig deeper, and activate a broader audience.

The stated mission of the [REDACTED], to abolish capital punishment, is reiterated throughout the newsletter. Therefore, the newsletter is considered as influencing legislation since it discusses the position to be taken with respect to advocating or opposing various legislative measures regarding the abolition of capital punishment. In addition to the newsletter, portions of the [REDACTED] website can be considered influencing legislation. For example, the website, as of [REDACTED], noted an Abolish List, which is a moderated discussion list for those seeking regular news updates and discussion of tactics and issues from an abolitionist standpoint. This is discussing a position to be taken with respect to advocating the abolition of capital punishment, and therefore is considered to be influencing legislation. This position is repeated throughout the organization's newsletter and website. Clearly, [REDACTED] overall activities constitute substantial lobbying and far exceed the guidance as set forth in the Seasongood case as to what constitutes substantial lobbying.

Another indication of [REDACTED] activities constituting substantial lobbying is gleaned from its Statement of Revenue and Expenses submitted as part of its application for exemption. For instance, in [REDACTED] over approximately 50% of [REDACTED] budget consists of expenses associated with sending documents via mail (for example, \$[REDACTED] was spent for the bulk mail permit and annual fee, and \$[REDACTED] for postage). The organization has represented that it publishes a quarterly newsletter. The newsletters are disseminated through the bulk mail to its members. As discussed above, [REDACTED] newsletters are considered lobbying for purposes of the substantiality test under section 501(c)(3) of the Code.

**Primary Objective Attained Only By Legislation**

Rev. Rul. 62-71 is directly on point in this case. Like the organization in Rev. Rul. 62-71, the [REDACTED] primary objective, the abolition of capital punishment, can only be attained by legislation or a defeat of legislation. The name of the organization, [REDACTED] clearly supports this proposition. Also, the [REDACTED] website prominently states its mission as:

The object of this society is stated in its name; its purpose is to enroll as a member every person in Indiana who is opposed to the death penalty; to prepare and circulate printed matter and literature on the subject, carry on a campaign of education, arouse the public conscience, and seek to have the legislature remove from the statutes the unjust, inhuman and barbarous law.

[REDACTED] has placed all of its emphasis on the dissemination of a single broad message, abolish capital punishment, which goal can only be attained by legislation. [REDACTED] is not entitled to exemption from Federal income tax under section 501(a) of the Code, since it is an "action" organization and thus is not operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the address listed below. However, if you are sending your correspondence via hand delivery please call this office.

Internal Revenue Service  
Attn: [REDACTED]  
T:EO:RA:T:3  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3

	Initiator	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]		
Surname	[REDACTED]	[REDACTED]		
Date	[REDACTED]	[REDACTED]		